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**Mid City Parking, Inc. and Teamsters Local 727.** Case 13–CA–257439

April 8, 2021

BY MEMBERS KAPLAN, EMANUEL, AND RING

**DECISION AND ORDER**

The General Counsel seeks a default judgment in this case on the ground that Mid City Parking, Inc. (the Respondent) has failed to file an answer to the amended complaint and compliance specification. Upon a charge and amended charge filed by Teamsters Local 727 (the Union) on March 5 and May 21, 2020,<sup>1</sup> respectively, the General Counsel issued a complaint, compliance specification, and notice of hearing (the complaint and compliance specification) on July 15. Thereafter, on October 16, the General Counsel issued an amended complaint, amended compliance specification, and notice of hearing (the amended complaint and compliance specification) alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer to either the complaint and compliance specification or the amended complaint and compliance specification.

On January 4, 2021, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 7, 2021, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>1</sup> All dates are in 2020 unless otherwise specified.

<sup>2</sup> On November 4, the Region issued an order correcting answer due date, extending the Respondent's response period to November 25.

<sup>3</sup> The General Counsel's Motion for Default Judgment and attached exhibits indicate that, on July 15, the Respondent was served with the complaint and compliance specification by certified mail, return receipt requested, at its then-current address registered with the State of Illinois for service of process. On August 30, the Respondent changed its registered address with the State of Illinois. On October 16, the amended complaint and compliance specification was served on the Respondent by email. The Region's December 1 reminder letter, with another copy of the amended complaint and compliance specification attached, was served on the Respondent by email and certified mail to the new registered address. The General Counsel's Motion for Default Judgment was served on the Respondent by regular mail to the new registered address.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from the service of the compliance specification. In addition, the amended complaint and compliance specification affirmatively stated that unless an answer was received by October 30, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the amended complaint are true.<sup>2</sup> Further, the undisputed allegations in the General Counsel's motion disclose that by letter dated December 1, the Region advised the Respondent that unless an answer was received by December 7, a Motion for Default Judgment would be filed. Nevertheless, the Respondent failed to file an answer.<sup>3</sup>

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the amended complaint and compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Illinois corporation with an office and place of business in Chicago, Illinois, has been engaged in the business of providing parking services at various locations throughout the City of Chicago.

In conducting its operations during the calendar year December 31, 2019, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its Illinois facilities goods, materials, and services valued in excess of \$5000 from points outside the State of Illinois.

There is no indication in the record that any of these mailings, physical or electronic, were returned as undeliverable. The Board's January 7, 2021 Notice to Show Cause was served on the Respondent at its new registered address by both certified and regular mail. The copy of the Notice to Show Cause sent by certified mail was returned unclaimed. There is no indication that the copy sent by regular mail was returned as undeliverable. We find that service was sufficient. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Cray Construction Group LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd.* sub nom. *NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988).

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, William Sommerfeld has been the Respondent's owner and has been a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

2.(a) The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors[,] customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining work.

(b) Since about November 1, 2016, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement (the agreement) between the Respondent and the Union, effective from November 1, 2016, through October 31, 2021.

(c) At all times since about November 1, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

3.(a) About March 4, the Respondent failed to continue in effect all the terms and conditions of the agreement described in paragraph 2(b) by closing its operations and laying off the unit.

(b) About March 4, the Union requested, by email, that the Respondent bargain collectively about the effects of the closure of the Respondent's business.

(c) The subjects in paragraph 3(a) relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

(d) The Respondent engaged in the conduct described in paragraph 3(a) without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent about its decision and or the effects of its decision to lay off the bargaining unit.

4.(a) About March 4, the Union requested, in writing, that the Respondent furnish the Union with the following information:

(1) A full and complete up to date list of all locations currently operated by Mid City;

(2) A full and complete seniority list of all bargaining-unit employees, including seniority dates, wage rate, and all current PTO account balances;

(3) Any and all documents relied upon by the Company in making its decision to close;

(4) The name and contact information for the Company who will resume operations at the locations listed in Item 1 after Mid City's departure;

(5) Any and all agreements or leases between Mid City and the locations listed in Item 1 and the expiration date of said agreements;

(6) Any and all sale or merger agreements between Mid City and any other parking operator in the City of Chicago; and

(7) The Company's document retention policy.

(b) The information requested by the Union, as described in paragraph 4(a), is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(c) Since about March 4, the Respondent, by William Sommerfeld, has failed and refused to furnish the Union with the information requested by it, as described in paragraph 4(a).

## CONCLUSIONS OF LAW

1. By the conduct described above in paragraph 3, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

2. By the conduct described above in paragraph 4, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

3. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to

effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure to bargain with the Union about the effects of its decision to close its Chicago, Illinois facilities, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closure on the unit employees; (2) the parties reach a bona fide impasse in bargaining; (3) the Union fails to request bargaining within 5 business days after receipt of this Decision and Order or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union subsequently fails to bargain in good faith. In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees

normally would have received during the applicable period and shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Here, the General Counsel in the compliance specification seeks the minimum of 2 weeks of backpay due the unit employees under *Transmarine*, plus any additional backpay that may be due depending upon bargaining between the parties regarding the effects of the Respondent's decision to close. As noted above, we shall grant the General Counsel's request and order the Respondent to pay those amounts, plus any additional backpay that may accrue to the earliest of the conditions set forth in *Transmarine*, plus interest.

We shall also order the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition, in accordance with our recent decision in *Cascades Containerboard Packaging-Niagara*, 370 NLRB No. 76 (2021), we shall order the Respondent to file with the Regional Director for Region 13 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information requested on about March 4, we shall order the Respondent to provide the Union with the requested information.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the agreement, which we infer from the compliance specification to include ceasing to make contributions to the Union's health and welfare, pension, and legal defense and education funds as required by Article 8 of the agreement,<sup>4</sup> we shall order the Respondent to make the benefit funds and the unit employees whole. Specifically, we shall order the Respondents to make all such delinquent fund contributions on behalf of unit employees in the amounts set forth in the compliance specification and the Attachment, with interest accrued to the date of payment, as prescribed in *New Horizons*,

<sup>4</sup> The compliance specification alleges that the Respondent was required by the agreement to contribute to these funds, and it also alleges the amounts owed to each fund.

above, compounded daily as prescribed in *Kentucky River Medical Center*, above. In addition, the Respondent shall make the employees whole for any expenses they may have incurred as a result of the Respondents' failure to make such payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, above, with interest as prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.<sup>5</sup>

Finally, because the Respondent has closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees to inform them of the outcome of this proceeding.

### ORDER

The National Labor Relations Board orders that the Respondent, Mid City Parking, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Teamsters Local 727 (the Union) as the exclusive collective-bargaining representative of the following unit, by failing and refusing to bargain over the effects of its decision to close:

Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors[,] customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining work.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) Ceasing to make contributions to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund as required by the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole employees Marcelo Barbieri, Thomas Barnes, Kevin Chapman, Dariel D'Ottone, Bernadino Echeverria, Roger Eshun, George Georgiev, Antonio Harper, Jullian Heccervera, Emerterio Herrera, Florencio Jimenez, Shawn Kerber, Maciek Kozoil, Vicente Lagunas, Jr., John Carlo Luistro, Carlos Martinez, Temica McKenzie, John McKenzie, Phillip Mensah, Drew Moore, Ilian Nenchev, Hugo Roman, Rene Roman, Angel Valverde, and Kobe (last name unknown) for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, by paying them the amounts shown opposite their names in the Attachment, plus interest accrued to the date of payment and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision.

(b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 13, within 21 days from the date of this Order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) File with the Regional Director for Region 13 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay awards.

(e) Furnish to the Union in a timely manner the information requested by the Union on March 4, 2020.

(f) Remit to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund the amounts shown opposite their names in the Attachment, plus interest accrued to the date of payment and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision.

(g) Make whole, with interest, the unit employees for any expenses they incurred as a result of the Respondent's failure to make contributions to the funds, in the manner set forth in the remedy section of this decision.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

<sup>5</sup> To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent

necessary to analyze the amount due under the terms of this Order.

(i) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>6</sup> to the Union and to all unit employees who were employed by the Respondent at any time since March 4, 2020. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.<sup>7</sup>

(j) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 8, 2021

\_\_\_\_\_  
Marvin E. Kaplan, Member

\_\_\_\_\_  
William J. Emanuel, Member

\_\_\_\_\_  
John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>7</sup> Because the facilities involved in this proceeding have closed, we do not modify the notification remedy as set forth in *Danbury Ambulance*

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Teamsters Local 727 (the Union) as the exclusive collective-bargaining representative of the following unit, by failing and refusing to bargain over the effects of our decision to close:

Cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors[,] customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining work.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT cease to make contributions to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund as required by the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make whole our employees Marcelo Barbieri, Thomas Barnes, Kevin Chapman, Darrel D'Ottone, Bernardino Echeverria, Roger Eshun, George Georgiev, Antonio Harper, Jullian Heccervera, Emerterio Herrera, Florencio Jimenez, Shawn Kerber, Maciek Kozoil, Vicente Lagunas, Jr., John Carlo Luistro, Carlos Martinez, Temica McKenzie, John McKenzie, Phillip Mensah, Drew Moore, Ilian Nenchev, Hugo Roman, Rene Roman, Angel Valverde, and Kobe (last name unknown) for any loss of earnings and other benefits suffered as a result of our

*Service, Inc.*, 369 NLRB No. 68 (2020) (holding that, if facility involved in proceedings is closed due to Coronavirus Disease 2019 (COVID-19) pandemic, notification obligation is delayed until 14 days after facility reopens and substantial complement of employees have returned to work).

unlawful conduct, by paying them the amounts set forth in the Decision and Order of the National Labor Relations Board, plus interest and minus tax withholdings required by Federal and State laws.

WE WILL pay our unit employees further limited backpay, plus interest, in connection with our failure to bargain over the effects of our decision to close, as required by the Board's Order.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 13, within 21 days of the date of the Board's Order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 13 copies of your W-2 forms reflecting the backpay awards.

WE WILL furnish to the Union in a timely manner the information requested by the Union on March 4, 2020.

WE WILL remit to the Union's Health and Welfare Fund, Pension Fund, and Legal and Educational Assistance Fund the amounts set forth in the Board's Order, plus interest

and minus tax withholdings required by Federal and State laws.

WE WILL make whole, with interest, our unit employees for any expenses they incurred as a result of our failure to make the contributions to the funds.

MID CITY PARKING, INC.

The Board's decision can be found at [www.nlr.gov/case/13-CA-257439](http://www.nlr.gov/case/13-CA-257439) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



## ATTACHMENT

Claimant	Minimum <i>Transmarine</i> Remedy/Fund Remittance
Barbieri, Marcelo	\$1576.00
Barnes, Thomas	\$1716.00
Chapman, Kevin	\$1576.00
D'Ottone, Dariel	\$1576.00
Echeverria, Bernadino	\$1576.00
Eshun, Roger	\$1736.00
Georgiev, George	\$1736.00
Harper, Antonio	\$1576.00
Heccervera, Jullian	\$1576.00
Herrera, Emerterio	\$1796.00
Jimenez, Florencio	\$1736.00
Kerber, Shawn	\$1576.00
Kozoil, Maciek	\$1736.00
Lagunas, Jr., Vicente	\$1576.00
Luistro, John Carlo	\$1576.00
Martinez, Carlos	\$1576.00
McKenzie, Temica	\$1736.00
McKenzie, John	\$1624.00
Mensah, Phillip	\$1576.00
Moore, Drew	\$1576.00
Nenchev, Ilian	\$1344.00
Roman, Hugo	\$1736.00
Roman, Rene	\$1576.00
Valverde, Angel	\$1576.00
(Last Name Unknown), Kobe	\$1624.00
Teamsters Local Union No. 727 Health and Welfare Fund	\$37,325.00
Teamsters Local Union No. 727 Pension Fund	\$11,050.00
Teamsters Local Union No. 727 Legal and Educational Assistance Fund	\$3050.00
Total	\$92,009.00